

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

FRED S. SILVERMAN  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 North King Street, Suite 10400  
Wilmington, DE 19801-3733  
Telephone (302) 255-0669

March 25, 2010

Joseph A. Hurley, Esquire  
1215 King Street  
Wilmington, DE 19801

Matthew B. Frawley, Esquire  
Deputy Attorney General  
Carvel State Office Building  
820 No. French Street  
Wilmington, DE 19801

RE: *State v. Adam J. Watkins*  
*ID# 0906014912*

**Upon Defendant's Motion to a New Trial – *DENIED***

Dear Counsel:

On March 8, 2010, the State responded to Defendant's January 19, 2010, Motion for a New Trial. The State's submission was called for by the court's January 25, 2010 letter/order.

As the letter/order said, during the trial, and now in post-trial motion practice, Defendant has attempted to undermine the similarities between Defendant and the video of the ATM robber shown to the jury. Defendant's theme is that there were robberies at the bank across street from the ATM machine and at a bank located

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four or five miles away. Defendant argues that the robber shown in those videos appears similar to the robber shown in the video of the ATM robbery. Accordingly, Defendant contends that the bank robberies create doubt about Defendant's identification as the ATM robber.

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"A defendant may . . . establish his innocence by showing that some other person or persons committed the crime charged, instead of himself. But the mere possibility that some third person did the act is not enough."<sup>1</sup> "Evidence tending to incriminate another must be competent and confined to substantive facts which create more than a mere suspicion that such other person committed the particular offense in question."<sup>2</sup>

Broadly, the court agrees with Defendant: "The greater the degree of similarity, the greater is the possibility that the Defendant is a victim of mistaken identification." Taking everything into account, however, Defendant has not

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<sup>1</sup>*Fortson v. State*, 379 N.E.2d 147, 153 (Ind. 1978) (citation omitted); *see also State v. Corley*, 943 A.2d 501, 504 (Conn. 2008) ("Evidence that would raise only a bare suspicion that a third party, rather than the defendant, committed the charged offense would not be relevant to the jury's determination."); *State v. Koedatich*, 548 A.2d 939, 976-79 (N.J. 1988); *People v. Brown*, 590 N.Y.S.2d 896, 898 (N.Y. App. Div. 1992), *appeal denied*, 597 N.Y.S.2d 943 (N.Y. 1993) ("While due process requires that a defendant in a criminal case be permitted to . . . introduce evidence that a person other than he committed the crime charged, 'such evidence must do more than raise a mere suspicion that another person committed the crime; there must be a clear link between the third party and the crime in question.'") (citation omitted); *People v. Kent*, 404 N.W.2d 668, 674 (Mich. Ct. App. 1987). *Cf. U.S. v. Robinson*, 544 F.2d 110 (2d Cir. 1976).

<sup>2</sup>*Fortson*, 379 N.E.2d at 153.

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demonstrated how the photographs in video the of the daylight, bank-teller robberies are relevant to this case, which is a nighttime robbery of an ATM customer.

The fact that the robberies occurred in the same vicinity, and the fact that one of the bank robber's "head is covered by a garment and he was wearing sunglasses, but he [arguably] has a prominent nose not unlike the nose of Defendant[,]" is not enough to increase the possibility that Defendant is a victim of mistaken identification, as Defendant contends.

As mentioned, the bank robberies were in daylight and the victims were tellers. The ATM robbery was at night and the victim was a customer. There is a general similarity between the robbers, but their head covering and sunglasses, especially the former, are dissimilar. The State also points to further dissimilarity between the weapons displayed, the Defendant's physical appearance, and the crimes' timing. There is no "clear link" between the robbers. Hence, the limited probative value of the bank robbery videos is outweighed by the risk of confusing and side-tracking the jury.

Finally, so the record is clear, the identification evidence was not overwhelming. The verdict is probably explained, however, not only by the direct evidence pointing to Defendant, especially the impression he created in court when he put on the hat found in his apartment and sunglasses. The verdict was supported by circumstantial evidence, such as Defendant's living close to the ATM, and Defendant's possessing a black, knit hat with, curiously, a team logo patch having been torn off.

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For the foregoing reasons, Defendant's Motion for New Trial is  
**DENIED.** Sentencing will take place as previously scheduled, on April 16, 2010.

**IT IS SO ORDERED.**

Very truly yours,

FSS: mes  
cc: Prothonotary (Criminal)